Supreme Court, U.S.
FILED
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No. 97-1600

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

MONIKA F. BAYER,
Petitioner

vs.

STANFORD UNIVERSITY SCHOOL OF MEDICINE/
MEDICAL CENTER; STANFORD UNIVERSITY;
L ROSS MCDOUGALL and GARY M. GLAZER;
Respondents

_____/

On Petition for Writ of Certiorari to the Court of Appeal,
State of California, Sixth Appellate District

PETITIONER'S REPLY BRIEF

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6 pp

NEW FEDERAL QUESTION PRESENTED

3. Did the invólvement of the Chief Justice of the California Supreme Court in a decision in this case comport with petitioner's *Due Process rights* under the Fourteenth Amendment, when he is a graduate of Stanford University, the defendant in this case?

REPLY STATEMENT OF THE CASE

After the Petition for Certiorari was filed, petitioner has discovered that California Supreme Court Chief Justice Ronald George is a graduate, J.D. 1964, of Stanford University Law School, the defendant University in this case. (California Courts and Judges, 1998 Edition).

This is noteworthy, because he rendered or presided over the decision on her Petition for Writ of Review, as evidenced by his signature on the order denying that petition. (Pet[1]. 21a.)

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Respondents' characterizations of this case as "routine", or "garden variety state employment case" (Opp.1, 8) are as untrue or false as their contentions, or the arbitrator's findings they cite (Opp. 2, 3), concerning the cover up "layoff". (Pet. 5,8,9.).

For one, routine employment cases do not involve employers' coercion of employees to commit criminal acts, acts that could get the employees into jail, as the evidence unequivocally shows in this case. (Pet. 2-6). Nor do they involve destruction of careers and lives of employees who simply refuse unlawful orders. Specifically, it is not "routine" to punish an employee with a demotion from an academic, legal to a non-academic, illegal job, with "disciplinary suspensions" (only intended for gross professional misconduct) and with other reprisals when she complied with the letter of statutory public policy for health, as she was ordered to do by the California Department of Health Services. Yet this is what the record in this case clearly shows. (Pet. 2-6)

More importantly in context with this petition, routine cases do not involve adjudication of the parties' rights by failure or refusal to apply and enforce, at all, the substantive law(s) of the case, nor do they involve the arbitrary abrogation of constitution-

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[1] Abbreviations: "Pet" refers to the Petition for Certiorari and its Appendices; "Opp" to Brief in Opposition. "AA" to Petitioner's Appendix on appeal.

ally protected interests. By contrast, petitioner was arbitrarily denied judicial relief for gravest injuries.

REPLY ARGUMENT

1. Additional infringement upon petitioner's Due Process rights by a not impartial Chief Justice.

The Fourteenth Amendment Due Process Clause requires an "impartial" decision maker. Relevant precedents (Aetna Life Insurance Co. v Lavoie, 475 US 813, 89 L Ed 2d 823 and cases cited therein.) hold, for example:

> no judge "can be a judge in his own case [or be] permitted to try cases where he has an interest in the outcome. (re Murchison, 349 U.S. 133, 136)

In addition, case law states that a reasonable formulation of the degree or kind of interest sufficient to disqualify a judge is:

> whether the situation is one 'which would offer a possible temptation to the average....judge to...lead him not to hold the balance nice, clear and true.' (Ward v Village of Monroeville, 409 U.S. at 60).

As an alumnus of Stanford University, the Chief Justice of the California Supreme Court, Ronald George, presumably had a direct, personal and not negligible interest in the outcome of this case against his alma mater.

Further of note is that the Chief Justice and Stanford's Counsel of Record during all the appeal proceedings, John Reese, seem to have been contemporaries at Stanford, as they obtained their law degrees from Stanford at about the same time, i.e., in 1964 and 1965, respectively, (Martindale-Hubbell Law Directory 1998).

Accordingly, the Chief Justice's presiding over, or his participation in any decision in this case against Stanford University goes against the grain of a basic principle of *Due Process of Law.*

In particular, the fact that he determined, or presided over

the disposition of the Petition for extraordinary Writ of Review, which specifically asked the California Supreme Court to review whether the lower courts had afforded petitioner *Due Process of Law* (Pet. 23a-26a), and whether failure to apply the law didn't exceed jurisdiction, at least, appears inconsistent with *due process* requirements.

2. Due Process violations were properly raised in the state court.

The circumstances that caused the *due process* violations to occur, or become ripe only at the end of the state proceedings were beyond petitioner's control, (Pet.:16-17), but she properly raised these issues, at the first opportunity, in her Petition for Writ of Review.

Pursuant to Cal. Code Civ. Proc., Sec.1067, 1068 et seq. and Rule 56, Cal. Rules of Court, a writ of review is specifically designed to address judicial action in excess of jurisdiction, i.e., if a court does not follow a constitutional provision, a state statute or a rule of decisional law of a higher court, and/or, "if the lower court's determination imposes unusually harsh and unfair results for which ordinary appellate review is inadequate." (Science Applications Internat. Corp. v. Superior Court [1995] 39 Cal App.4th at 1096.)

Accordingly, the Petition for Writ of Review was more appropriate than one for a rehearing in order to review the constitutionality of the judgment. It was timely filed within a 60 days period[2] (61 days since the 60th day was a Sunday) after the California Supreme Court's denial of an ordinary review. (Pet.1, 16).

Defendants filed a response to this Petition for Writ of Review without objections to any procedural matters, thus they waived their right to subsequently raise such objections.

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[2] There is no statutory time limit on the application of such writs (State of California v. Superior Court (1968), 263 Cal. App.2d. 396, at 399). " An appellate court may consider a petition for extraordinary writ at any time, but has discretion to deny a petition filed after the 60-day period....." (Popelka v. Superior Court, (1980), 107 Cal App 3d 496, at 499 and citations therein).

3. This Petition for Certiorari is timely.

It was filed within 90 days after the denial of the Petition for Writ of Review by the California Supreme Court. All relevant dates are listed in Pet. at 1.

It has been consistent practice that a timely petition for rehearing tolls the start of the 90 day period within which certiorari must be sought until rehearing is denied. Further, most importantly, precedents imply or suggest that similar petitions, such as a petition for writ of review, should qualify for treating them like petitions for rehearing for purposes of tolling the 90 day period for seeking certiorari. The implication is, it makes no sense for this Court to rule on an issue while a valid petition for review is still pending in the state court. (United States v. Healy [1964] 376 U.S. 75, at 78-80; Missouri v. Jenkins [1990] 495 U.S. 33, at 45-47)

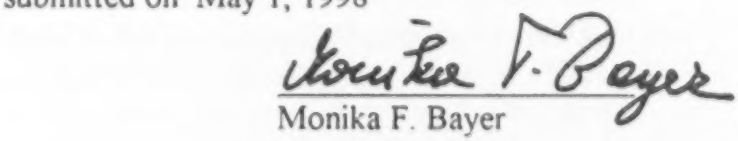
Accordingly, the 90 day period began to run from the date of the denial of the Petition for Writ of Review, which was December 23, 1997, which makes the filing of this petition on March 20, 1998 timely.

Furthermore, this Petition for Certiorari was filed within 90 days of an event which prompted the latest constitutional question.

CONCLUSION

The opposition to this Petition for Certiorari lacks substance and merit. Thus this Petition should be granted.

Respectfully submitted on May 1, 1998



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